

Subpart D—Testimony and Production of Documents in Legal Proceedings in Which FCA is Not a Named Party

§ 602.17 Policy.

(a) The rules in this subpart preserve the confidentiality of FCA's documents and information, conserve employees' time for official duties, uphold fairness in litigation, and help the Chairman decide when to allow testimony and to produce documents. This subpart does not affect access to documents under the FOIA or the Privacy Act. See subpart B of this part and part 603 of this chapter.

(b) Generally, we will not produce documents voluntarily and employees will not appear as witnesses voluntarily in any legal proceeding. However, in limited circumstances, the Chairman may allow the production of documents or testimony when the Chairman decides it would be in the best interest of FCA or the public. All privileged documents produced under this subpart remain our property. Any employee having information or privileged documents may disclose them only as allowed by the Chairman.

§ 602.18 Definitions.

Court means any entity conducting a legal proceeding.

Demand means any order, subpoena, or other legal process for testimony or documents.

Direct costs means FCA's costs to search for, review, and reproduce documents to respond to a request. Direct costs include the pro rated cost of the salary of the employee performing the work (based on the basic rate of pay plus 16 percent to cover benefits) and the cost of operating reproduction equipment.

Document means any record or other documentary materials, such as books, papers, maps, photographs, and machine-readable materials, regardless of physical form or characteristics (for example, electronic format) in our possession and control when we receive the request.

Employee means any present or former FCA employee, any present or former FCA Board member, any former

Federal Farm Credit Board member, any present or former FCA-appointed receiver or conservator, and any present or former agent or contractor.

FCA Counsel means the General Counsel, a Department of Justice attorney, or counsel authorized by FCA to act for the FCA or an employee.

General Counsel means the FCA's General Counsel or designee.

Legal proceeding means any administrative, civil, or criminal proceeding, including a discovery proceeding, before a court when FCA is not a named party and has not instituted the legal proceeding.

§ 602.19 Request for testimony or production of documents.

(a) *How to make and address a request.* Your request for an employee's testimony about official matters or the production of documents must be in writing and addressed to the General Counsel, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

(b) Your request must contain the following:

- (1) Title of the case;
- (2) Forum;
- (3) Your interest in the case;
- (4) Summary of the litigation issues;
- (5) Reasons for the request;
- (6) Why the confidential information is important; and
- (7) An explanation of why the testimony or document you want is not reasonably available from another source. If you want testimony, you must also state how you intend to use the testimony, provide a subject matter summary of the requested testimony, and explain why a document could not be used instead.

(c) The General Counsel may ask you to limit your request to make it less burdensome or to give us information to help us decide if providing documents or testimony is in the public interest.

§ 602.20 Testimony of FCA employees.

(a) An employee may testify only as the Chairman approves in writing. Generally, an employee may testify only by deposition or written interrogatory. An employee may give only factual testimony and may not give opinion testimony.

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(b) If, in response to your request, the Chairman decides that an employee may testify, you must serve the employee with a subpoena under applicable Federal or State rules of procedure and at the same time send a copy of the subpoena by registered mail to the General Counsel.

(c) Normally, depositions will be taken at the employee's office, at a time convenient to the employee and the FCA. FCA counsel may represent FCA's interests at the deposition.

(d) If you request the deposition, you must give the General Counsel a copy of the deposition transcript at no charge.

§ 602.21 Production of FCA documents.

(a) An FCA employee may produce documents only as the Chairman allows.

(b) Before we will release any documents, the requesting party must get an acceptable protective order from the court before which the action is pending that will preserve the confidentiality of the documents to be released.

(c) On request, we may provide certified or authenticated copies of documents.

§ 602.22 Fees.

(a) For documents released under this subpart, FCA will charge:

(1) The direct costs of searching for responsive records, including the use of a computer, reviewing the records, and reproducing them. We also will charge for the direct costs of any other services and materials that we provide at your request.

(2) Fifteen cents a copy for each page made by photocopy or similar process.

(3) The direct costs for each certification or authentication of documents.

(b) You must pay by personal check, bank draft drawn on a United States bank, or postal money order made payable to FCA. We will waive fees of \$15.00 or less. We will send the documents after we receive your payment.

§ 602.23 Responses to demands served on FCA employees.

(a) An employee served with a demand or a subpoena in a legal proceeding must immediately tell the

General Counsel of such service, the testimony or documents described in the demand, and all relevant facts.

(b) When the Chairman does not allow testimony or production of documents, FCA Counsel will provide the regulations in this subpart to the party or court issuing the demand and explain that the employee may not testify or produce documents without the Chairman's prior approval.

(c) If the court rules the employee must comply with the demand regardless of the Chairman's instructions not to do so, the employee must respectfully refuse to comply.

(d) FCA's decision under this subpart to comply or not to comply with any demand is not a waiver, an assertion of privilege, or an objection based on relevance, technical deficiency, or any other ground. We may oppose any demand on any legal ground.

§ 602.24 Responses to demands served on non-FCA employees or entities.

If you are not an employee and are served with a demand or a subpoena in a legal proceeding directing you to produce or testify about an FCA report of examination, other document created or adopted by FCA, or any related document, you must object and immediately tell the General Counsel of such service, the testimony or documents described in the demand, and all relevant facts. You also must object to the production of any documents on the basis that they are FCA's property and cannot be released without FCA's consent. You should tell the requester the production of documents or testimony must follow the procedures in this part.

Subpart E—Release of Records in Public Rulemaking Files

§ 602.25 General.

FCA has a public rulemaking file for each regulation. You may get copies of documents in the public rulemaking file by sending a written request to the Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090. We will charge fifteen cents a